



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 07, 2022

IN THE MATTER OF:

Appeal Board No. 621240

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 621240, 621241 and 621242, the employer appeals from the decisions of the Administrative Law Judge filed February 2, 2022, which overruled the initial determinations, holding the claimant ineligible to receive benefits, effective May 4, 2020, through June 28, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$4,032.00 in benefits recoverable pursuant to Labor Law §

597 (4); charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation of \$4,800.00 recoverable pursuant to § 2104 (f)(2)

of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; reducing the claimant's right to receive future benefits by 32 effective days; and charging a civil penalty of \$604.80 on the basis that the claimant made a willful misrepresentation to obtain benefits.

At the combined telephone conference hearings before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the employer.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was employed by a hospital for eighteen years as a full-time as a clerk. Her job duties included processing insurance claims. Due to the COVID-19 pandemic, all employees were given paid leave from March 17, 2020, through April 5, 2020. As of April 5, 2020, employees were

returning to work.

In early April, the claimant asked to return to work. As a condition of returning to work, all employees were required to submit to temperature screenings. Co-workers would administer the temperature checks of other staff members on a rotating basis. This would only take a few hours per shift. The claimant did not want to administer the screenings. She asked to be excused from the assignment. The employer responded that there was no other work to be done and that if she did not report, she would be removed from the payroll. Both she, and her mother, suffered from diabetes and the claimant believed that she and her mother were at a heightened risk if they contracted Covid-19. The claimant's doctor did not advise the claimant to seek different employment. The claimant requested medical leave under the Family Medical Leave Act to care for her mother.

The employer granted the Family Medical Leave from April 5, 2020, through June 29, 2020. The claimant had exhausted all personal accruals on April 23, 2020. She remained on unpaid medical leave through June 26, 2020.

The claimant filed a claim for unemployment insurance benefits on June 26, 2020, and her claim was made effective as of March 9, 2020. The claimant understood that she was required to be ready, willing, and able to accept work to be entitled to unemployment insurance benefits.

On June 26, 2020, the claimant certified, for the weeks ending May 10, 17, 24, 31 June 7, 14, and 21, and indicated that there were no days that she was not ready, willing, and able to work. She then certified, on July 1, 2020, for the week ending June 28, 2020, that there were no days that she was not ready, willing, and able to work. The claimant received the unemployment insurance benefits in question.

On June 30, 2020, the claimant returned to work and began performing the requisite Covid-19 staff screenings.

OPINION: The credible evidence establishes that the claimant was on FMLA leave from May 4, 2020, through June 28, 2020. The claimant could have returned to her regular employment at any time during this period, but she chose to remain on leave. Though the claimant contends that she did not want to return to work because she was afraid of contracting COVID-19 if she administered staff COVID-19 temperature checks, we note that the claimant's doctor did not advise

her to resign. Furthermore, the claimant ultimately returned to work and performed the required screenings as of June 30, 2020.

Therefore, during the period in question, the claimant made herself unavailable for employment. (See Appeal Board No. 541058) Accordingly, we conclude that the claimant was ineligible for unemployment insurance benefits from May 4, 2020, through June 28, 2020. As the claimant was ineligible for unemployment insurance benefits during the period in question, she was not entitled to the federal benefits which she received, and the federal benefits are deemed repayable.

As the claimant was ineligible for benefits, we further find that the claimant was not entitled to the regular benefits which she received and was overpaid benefits. Her certifications, that she was ready, willing, and able to work, when, in fact, she was not willing to resume her employment, were factually false and render the overpayment recoverable. These certifications also constitute willful misrepresentations for which a forfeit penalty is properly imposed. As there is a recoverable overpayment and willful misrepresentations, the civil penalty is also properly imposed.

DECISION: The decisions of the Administrative Law Judge are reversed.

In Appeal Board Nos. 621240, 621241 and 621242, the initial determinations, holding the claimant ineligible to receive benefits, effective May 4, 2020, through June 28, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$4,032.00 in benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant with an

overpayment of Federal Pandemic Unemployment Compensation of \$4,800.00 recoverable pursuant to § 2104 (f)(2) of the Coronavirus Aid, Relief and

Economic Security (CARES) Act of 2020; reducing the claimant's right to receive future benefits by 32 effective days; and charging a civil penalty of \$604.80 on the basis that the claimant made a willful misrepresentation to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER